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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,726	12/10/2003	William T. Ball	P06239US1-152	2017

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DES MOINES, IA 50309-2350

EXAMINER
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FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/732,726

Applicant(s)

BALL, WILLIAM T.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003 and 15 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/29/04</u> | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's election with traverse of Group I in the reply filed on April 15, 2005 is acknowledged. The traversal is on the ground(s) that the examiner has not provided support that the claimed product can be used in a process different from that claimed. This is not found persuasive because the Taylor, Jr. et al. reference is herewith cited which discloses a different use. See column 1, lines 12-18, for example.

The requirement is still deemed proper and is therefore made FINAL. Accordingly, claims 7 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b). Claim 9 will be examined with the elected embodiment as being a linking claim.

2. The status and accuracy of the parent application(s) should be updated/corrected.

3. The disclosure is objected to because of the following informalities: Page 5, line 11 and page 7, line 11, "28" designates different elements; page 8, line 5, "22A" apparently should be --20A--; and page 9, line 11, "102" apparently should be --82--.

Appropriate correction is required.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "placing", "charging" and "purging"

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steps set forth in claim 1, and "means for placing", "means for charging", "means for purging" and "means for opening" set forth in claim 9, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "placing" step set forth in claim 1, "fluid passing assembly" set forth in claim 3, the subject matter of the last three lines set forth in claim 4, "placing" and "providing" steps set forth in claim 6, and "means for placing", "means for charging", "means for purging" and "means for opening" set forth in claim 9, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

6. Claims 1-6 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites "placing a thin diaphragm over the ... waste water port" and "charging the primary drain system with fluid". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. Merely placing a diaphragm over the drain port would not be sufficient to

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prevent water leakage when the drain system is charged with water. Claim 9 includes a similar recitation.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art and Palmer.

Applicant's admitted prior art (apa), disclosed in the paragraph bridging pages 1 and 2 of the instant specification, appears to teach all claimed elements except for the waste water port plug being a diaphragm.

Although the waste water port plug of the apa drain system does not include a diaphragm, as claimed, attention is directed

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to the Palmer reference which discloses an analogous drain system which further includes a waste water port (col. 1 lns. 12-14) having a diaphragm (col. 2 lns. 26-38). Therefore, in consideration of Palmer, it would have been obvious to one of ordinary skill in the drain system testing art to associate a diaphragm with the apa waste water port in order to enable quick and easy removal.

9. Claims 1 and 2, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball '241 and Palmer.

The Ball '241 ('241) reference discloses a method (title) comprising: a bathtub 18 including a bottom 26, side walls 22, end walls 24, an overflow port 30, a waste water port 28, and a drain system 32-42; an overflow port diaphragm 64; and a waste water port plug (col. 2 lns. 59-60). Re claim 2, '241 also discloses cutting open the diaphragm (col. 3 lns. 2-3). Therefore, '241 teaches all claimed elements except for the waste water port plug being a diaphragm.

Although the waste water port plug of the '241 drain system does not include a diaphragm, as claimed, attention is directed to the Palmer reference which discloses an analogous drain system which further includes a waste water port (col. 1 lns. 12-14) having a diaphragm (col. 2 lns. 26-38). Therefore, in consideration of Palmer, it would have been obvious to one of

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ordinary skill in the drain system testing art to associate a diaphragm with the '241 waste water port in order to enable quick and easy removal.

10. Claim 3, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over '241 and Palmer as applied to claim 1 above, and further in view of Ball '931.

The '241 drain system further comprises an overflow port fluid passing assembly 82.

Although the waste water port of the '241 drain system does not include a fluid passing assembly, as claimed, attention is directed to the Ball '931 ('931) reference which discloses an analogous drain system which further includes a waste water port 16 having a fluid passing assembly 46. Therefore, in consideration of '931, it would have been obvious to one of ordinary skill in the drain system art to associate a fluid passing assembly with the '241 waste water port in order to provide a desired ornamentation.

11. Claims 4-6, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over '241 and Palmer as applied to claim 1 above, and further in view of Francisco.

Although the drain system of the '241 bathtub does not include a threaded portion and lock washer, as claimed, attention is directed to the Francisco reference which discloses

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an analogous bathtub which further includes a drain system 102 having a threaded portion 48 and lock washer 52. Therefore, in consideration of Francisco, it would have been obvious to one of ordinary skill in the bathtub art to associate a threaded portion and lock washer with the '241 drain system in order to facilitate securement.

12. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga  
Primary Examiner  
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